

From: tom@wt6.usdoj.gov@inetgw
To: Microsoft ATR
Date: 1/28/02 1:52pm
Subject: Microsoft Settlement

Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530-0001

Dear Ms. Hesse:

My qualifications:

Bachelor of Science in Computer Science 1975

Over 20 years of computer programming, software installation, and computer repair experience

My overall complaints of the content of the "Proposed Final Judgement"

- 1) No attempt to remedy the past gains in market share and capital amassed by Microsoft through the unfair, illegal, and anti-competitive business practices employed in the intentional quest to dominate the PC market.
- 2) No attempt to remedy or control the proliferation of Microsoft Office, which is dominant at least in part due to Microsoft's API secrecy, bundling, tie-in, and interoperability tactics. Forcing complete disclosure of the file formats used would be a minimal attempt at restoring competition to this area.
- 3) No attempt to regulate Microsoft's behavior in non-desktop PC markets (wireless, handheld, internet services, etc.) where they have the leverage and funding amassed to date to overwhelm the competition in any emerging market that they choose to enter.
- 4) The PFJ contains enough loopholes and Microsoft-friendly definitions to let this company, famous for its past indiscretions, continue to flaunt the intent and purpose of this judgement.

Specific objections to the terms:

III Prohibited Conduct

J 2 "(c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, (d) agrees to submit, at its own expense, any computer program using such

APIs, Documentation or Communication Protocols to third-party verification, approved by Microsoft, to test for and ensure verification and compliance with Microsoft specifications for use of the API or interface, which specifications shall be related to proper operation and integrity of the systems and mechanisms identified in this paragraph.

THIS ALLOWS MICROSOFT THE LEEWAY TO REFUSE TO COOPERATE WITH OPEN SOURCE DEVELOPERS, WHOM THEY VIEW AS THE MOST SIGNIFICANT THREAT TO THEIR MONOPOLY.

The DOJ should not allow the criminal to define the terms, but rather specify that the API shall be available to developers at reasonable, fixed cost.

VI Definitions

N. "of which at least one million copies were distributed in the United States within the previous year. "

THIS STIPULATION IS A BARRIER TO ANY STARTUP COMPANY, and is unnecessary.

R."Timely Manner means at the time Microsoft first releases a beta test version of a Windows
Operating System Product that is distributed to
150,000 or more beta testers. "

DOES THIS MEAN THAT MICROSOFT CAN HAVE 149,000
BETA TESTERS WITHOUT REVEALING API SPECIFICATIONS TO OUTSIDE DEVELOPERS ?
Please, substitute wording that promotes fairness.

U."Windows Operating System Product? means the software code (as opposed to source code) distributed commercially by Microsoft for use with Personal Computers as Windows 2000 Professional, Windows XP Home, Windows XP Professional, and successors to the foregoing, including the Personal Computer versions of the products currently code named ?Longhorn? and ?Blackcomb? and their successors, including upgrades, bug fixes, service packs, etc. The software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion.

HERE WE GO AGAIN. LIMITING THE REMEDY TO ONLY ONE SEGMENT OF INFORMATION TECHNOLOGY,
WHILE MICROSOFT USES ITS CLOUT IN ANY EMERGING MARKET THAT IT CHOOSES TO ENTER.

Please apply the restrictions more broadly.

Conclusions:

The Proposed Final Remedy is too little, too late. It fails to properly regulate Microsoft's business practices in the future, while wholly neglecting to apply any remedy for the misconduct of the past. The consumers and software developers and even the hardware developers are NOT adequately served by this document.

If the Department of Justice will not enforce the anti-monopoly law of this country, then where can we, the citizens, look for remedy ?

Tom B. Younker
2777 Riderwood Dr.
Decatur, GA 30033
404-248-8082
Owner/Member of Dare Computer, LLC
404-248-0336